

Supreme Court

No. 2000-68-C.A.
(P3/97-3057A)

State :
v. :
Lyle Smith. :

ORDER

On December 1, 1998, appellant Lyle James Smith (Smith) was convicted for domestic abuse following his trial before a Superior Court jury. He later was sentenced to serve a term of one year at the Adult Correctional Institutions, six months of which was suspended with probation. He timely appealed that conviction to this Court. His appeal was perfected and docketed here on February 1, 1999. On February 4, 1999, execution of his sentence was stayed and he was released on his personal recognizance.

Thereafter, Smith appears to have embarked upon a course of procedural wrangling that has transformed what should have been a normal and routine appeal into a procedural quagmire, the result of which has sidetracked and delayed his appeal from his misdemeanor conviction and has resulted in this ancillary appeal concerning the accuracy of the 1998 criminal conviction trial transcript.

In February 1999, following his conviction, the filing of his appeal, and his release on personal recognizance, Smith wrote to the Providence County Clerk for the Superior Court claiming that his case

file docket sheets, which he referred to as “face sheets,” contained many errors and omissions. He requested the clerk to immediately conduct a “paper trail” with respect to corrections that he alleged were required in order to correct the file “face sheets.” He further informed the clerk to correct the “face sheets” and to notify him “as to your finding and forwarding a copy of any said such paper work to me.” He claimed, for example, that it was incorrectly reported that he had “several more than the herein above mentioned four (4) attorneys to date” and that the “face sheets” neglected to note that in a one month period, prior to his conviction, he had filed “fifteen (15) motions” that were not listed on the “face sheets.”¹

On May 3, 1999, “pursuant to Supreme Court Rule of Appellate Procedure 10(e),” Smith, through an Assistant Public Defender, filed a motion to correct the trial transcript and record of case events as listed upon the docket sheet of his Superior Court file, and moved for a limited remand. He alleged 175 specific omissions or errors in the recorded trial transcript that had been certified to this Court. On May 4, 1999, by Order of this Court, the disputed record and trial transcript was remanded to the Superior Court to be settled by that court and, if necessary, that a supplemental transcript and record be certified and transmitted back to this Court. Pending resolution of the disputed certified record, we ordered Smith’s appeal from his conviction to be held in abeyance.

On July 6, 1999, following hearings held before a justice of the Superior Court to determine the accuracy of the previously certified record and transcript, the hearing justice found that the trial transcript as previously certified was accurate, and he rejected Smith’s allegations of its alleged errors

¹ Smith, who denied ever striking or threatening his wife, the victim of his domestic abuse, stated in an affidavit that he dismissed one appointed counsel because that counsel did not agree with his “self defence [sic] and diminished capacity” defenses, and that his “diminished capacity was a direct result of my wife’s acts, along with the acts and or lack of actions of the Woonsocket Police, the Family Court of Rhode Island, consistent with my claims in family court case #P97-2204 and P96-2813 * * *.”

and omissions. Smith filed his notice of the instant appeal from the hearing justice's ruling on July 12, 1999.²

Before us for consideration in this appeal are Smith's contentions that the hearing justice erred in finding that the trial transcript as previously certified to this Court in Smith's original appeal from his conviction was accurate, and that Smith's allegations of errors and omissions in that transcript were without merit. The parties were directed by Order of this Court to appear and show cause, if any, why the issues raised in the defendant's appeal should not be summarily decided. On May 14, 2001, the parties did appear, and at that time we heard their oral arguments. We have reviewed and considered their legal memoranda, and after due consideration thereof, conclude that cause has not been shown, and we will proceed at this time to decide the defendant's appeal.

Smith, it appears from our review of the case record before us, has apparently attempted to persuade us that he possesses unusual powers of mental recollection. Indeed, not long ago, following trial of his divorce case in the Family Court, and after being disappointed in the outcome of that proceeding, he filed a motion to correct the Family Court trial transcript because, as here, he contended that it conflicted with his recollection of what was actually said by the various trial witnesses. As might be expected, what he alleged in that case to be error was trial testimony that did not favor his position, and he wanted the trial transcript to reflect what would be his more favorable recollections of the trial witnesses' testimonies.

In the pending appeal from his conviction, Smith's unique ability to recall every word of trial witness testimony is once again displayed, and on this occasion, he singles out 175 (really 173) alleged

² The record returned to us contains no order by the hearing justice regarding his determination relative to the accuracy of the trial transcript.

errors and omissions that he notes in the trial transcript. Once again, what he believes to be error does not favor his position, and what he believes has been omitted or should be added to the transcript favors his position. The hearing justice, a well reasoned and experienced jurist, obviously was unimpressed by Smith's alleged unique powers of recollection. He quickly and decisively separated the wheat from the chaff and then denied Smith's motion to correct the record. He found the trial transcript previously certified to this Court in Smith's original appeal to be accurate. Perhaps we too should cut to the chase to avoid further prolongation of the eventual resolution of Smith's original appeal, an appeal that has been lingering now in this Court for over two years.

We note from the record before us that Smith's appeal from his Superior Court conviction was perfected and docketed here on February 1, 1999. On May 3, 1999, Smith, with assistance from his counsel from the Office of the Public Defender, filed the instant motion to correct or modify the trial transcript, purportedly pursuant to Rule 10(e) of the Supreme Court Rules of Appellate Procedure. However, Rule 12(d) of the Supreme Court Rules of Appellate Procedure mandates that "[m]otions to correct the record as transmitted shall be made within twenty (20) days after docketing, or within such further time as the court or any justice thereof may order."

Smith's motion, it appears, was filed ninety days after his appeal was docketed. Therefore, it was filed seventy days late. We find no order in the record showing that the time for filing his motion had been extended beyond the twenty day filing requirement. Because Smith's motion to correct the record was untimely filed, we deny his appeal from the hearing justice's finding that the record as certified is accurate. In so doing, we would also note that we would have denied his appeal even if his motion to correct the trial transcript had been timely filed.

Smith's appeal is denied. His pending appeal in 98-672-C.A. shall be expedited for hearing on the show cause calendar.

Entered as an Order of this Court this 24th day of May, 2001.

By Order,

Clerk